IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 139 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

MAGANLAL MOHANLAL PANCHAL

Appearance:

1. INCOME TAX REFERENCE No. 139 of 1988

MR BB NAIK for Petitioner No. 1

MR KH KAJI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 05/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1980-81:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in directing the ITO to pass an order under Section 171 of the IT Act, 1961 for partial partition?"

2. The assessee claimed before the ITO that a partial partition had taken place amongst the members of the HUF ON 3-3-1979. It was stated that a sum of Rs.50,000/- standing to the credit of the HUF in the Bank account had been divided between the coparceners as under:-

1. Shri Maganlal Mohanlal Panchal Rs.30,000/-
2. Shri Kacharabhai M. Panchal Rs.10,000/-
3. Shri Revabhai M. Panchal Rs.10,000/-

The ITO refused to recognise the partial partition in view of subsection (9) of Section 171 introduced with effect from 1-4-1980.

The Appellate Assistant Commissioner confirmed the order made by the ITO.

The Appellate Tribunal relying on the decision of the Madras High court in the case of M.V. Vallippan and other vs. ITO, 170 ITR 238 directed the ITO to pass an order under Section 171 in respect of the assessee's claim for partial partition.

3. In the aforesaid case of M.V. Vallippan and others vs. ITO (supra), the Madras High Court had struck down the provisions of Section 171 (9) of the Income-tax Act, 1961 as violative of Article 14 of the Constitution and that it suffered from the vice of legislative incompetence.

4. We have heard Mr BB Naik, learned counsel for the revenue and Mr KH Kaji, learned counsel for the respondent - assessee.

5. At the hearing of this reference, our attention is invited to the decision of the Constitution Bench of the Supreme Court in the case of Union of India vs. M.V. Vallippan, 238 ITR 1027 wherein the Apex Court reversed the decision of the Madras High Court and held the provisions of section 171(9) to be constitutional.

6. In view of the aforesaid, we have to hold that the Tribunal was not right in law in directing the ITO to pass an order under section 171 of the IT Act, 1961 for partial partition. Since constitutional validity of the provision of section 171 (9) of the Act has been upheld by the Supreme Court, the ITO was justified in refusing to recognise the partial partition in view of the provisions of section 171 (9) introduced w.e.f. 1-4-1980.

Accordingly, our answer to the question referred to us is in the negative i.e. in favour of the revenue and against the assessee.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-